

1 evidence of the draftsman, the author, is directly relevant  
2 to the candor on that question, and moreover, as the attorney  
3 for the partnership on whom obviously the principles of the  
4 partnership relied, their own good faith could be held to rest  
5 up on the good faith of their agent and not just Mr. Belendiuk  
6 but also Mr. Naftelan and Mr. Miller and others who had any  
7 participation in the preparation of the pleading at issue. So  
8 I think that Mr. Belendiuk is entitled to explain why the  
9 pleading which the Bureau has questioned in its Bill of  
10 Particulars is a candid pleading and therefore ought to be  
11 allowed to explain what he understood the meaning and intent  
12 of the pleading were and there will be corroborating testimony  
13 from the principles on the same points.

14 MR. HARDMAN: Your Honor, if I may --

15 JUDGE GONZALEZ: Yes, sir.

16 MR. HARDMAN: -- that, we have shared all of the  
17 Bureau's objections so far even though I have not expressly  
18 stated so and we also join in this. The prob -- the basic  
19 problem is that what Mr. Emmons described as going on or what  
20 would be proffered, it's not really what's happening in this -  
21 - in these two paragraphs. If you look, for example, at the  
22 last full sentence at the bottom of Page 21, in Paragraph 42,  
23 to meet that issue the fundamental point I was trying to make  
24 in the motion was that SJI be majority partner, blah, blah,  
25 blah. It -- the argument is -- continues to assume that SJI

1 was the majority partner, a fact found, you know, contrary to  
2 the -- by the Commission and this is not an attempt to explain  
3 his state of mind as to why he thought it was a majority  
4 partner, it assumes that he -- that the fact of SJI being the  
5 majority partner and this is the type -- this type of  
6 discussion or argument that, you know, is -- it permeates the  
7 testimony.

8 MR. EMMONS: Your Honor, I take very strong  
9 exception to what Mr. Hardman just said, this sentence -- the  
10 Commission made no finding on what Mr. Belendiuk was trying to  
11 say or what he was saying in the motion for summary decision.  
12 Now, that's all that this --

13 JUDGE GONZALEZ: I don't think that's the nature of  
14 the objection, I think the nature of the objection is what  
15 he's saying here, is that correct?

16 MR. HARDMAN: That's correct, Your Honor.

17 MR. SCHNEIDER: This matter is not --

18 JUDGE GONZALEZ: Not what he said in the motion.

19 MR. EMMONS: No, but he's explaining, this testimony  
20 is to explain what he was saying in the motion.

21 JUDGE GONZALEZ: Well, I can see Mr. Hardman's  
22 point, I mean, it sounds like he is making a finding of fact  
23 almost --

24 MR. SCHNEIDER: But, Your Honor, this matter is not  
25 in here for the truth of the matter asserted, it's a simple

1 ruling you can make, not to accept it for that purpose.

2 JUDGE GONZALEZ: Well, I've considered that.

3 MR. SCHNEIDER: What you can -- the point that we're  
4 trying to make here and to take one sentence out of context, I  
5 think, is unfair to the testimony because if you read  
6 Paragraph 43 you'll understand there's more at issue here than  
7 just Mr. Nels -- Mr. Belendiuk's view. There is an issue as  
8 to whether or not the statements in the motion for summary  
9 decision were accurate and true and what he is attempting to  
10 say here -- what Mr. Belendiuk is attempting to say here is  
11 what he was trying to convey. It -- from our standpoint, what  
12 he -- the importance of his testimony is not what -- that --  
13 the importance is not whether or not it's true that SJI was  
14 the majority partner but what was important in the words that  
15 Mr. Belendiuk was using and that the partnership was using.  
16 If it turns -- the explanation can then be that any other  
17 interpretation was not something that was perceived by him at  
18 the time and so it relates to our beliefs and -- through  
19 Mr. Belendiuk of what the point of the words in this motion  
20 for summary decision were there for. Now, with respect to  
21 Paragraph 43, there is actual statements of occasions,  
22 occurrences, things that relate directly to testimony provided  
23 by Mr. Nelson and others about how this group functioned and  
24 how it worked and to strike those -- that paragraph wouldn't  
25 be at all consistent with the proposition that you're -- that

1 we shouldn't be saying things like SJI was the majority  
2 partner. I can understand your concern that you'll face an  
3 argument that this means what it -- that this is there for the  
4 truth of the matter asserted, it's not, it's there to show you  
5 the state of mind of the draftsman of the very document quoted  
6 at length in the Bill of Particulars.

7 MR. WEBER: Your Honor, while it is certainly true  
8 that the Bureau's Bill of Particulars does raise questions  
9 about this motion for summary decision, the Bureau still fails  
10 to see any relevance to Mr. Belendiuk's state of mind in  
11 drafting it. We certainly believe it is relevant the state of  
12 mind of LaStar when they caused this to be filed which would  
13 include the TDS/USCC witnesses and it's certainly relevant the  
14 state of mind of the USCC witnesses when they signed the  
15 supporting declaration to this motion for summary decision.  
16 However, what Mr. Belendiuk believed the motion for summary  
17 decision to mean is in no way relevant.

18 MR. SCHNEIDER: That is a much smaller matter than  
19 all of Paragraphs 42 and 43 but he was the draftsman, he was  
20 the counsel and his actions are attributable, they are -- all  
21 the witnesses will be available for cross-examination on the  
22 extent to which any of this was conveyed or the extent to  
23 which any was relied on or the extent to which they relied on  
24 their attorneys.

25 JUDGE GONZALEZ: But what's -- we're not examining

1 the motion for summary decision here, are we?

2 MR. SCHNEIDER: The Bill of Particulars quotes from  
3 it.

4 JUDGE GONZALEZ: It quotes from it but I think what  
5 we're really trying to get into is the mind of the people  
6 filing declarations, is that correct, in support of the  
7 motion? I assume that's the only reason because otherwise --

8 MR. WEBER: It does quote from both the motion  
9 itself as well as from the declarations but we would have to  
10 look into the mind of the people who caused it to be filed and  
11 not the draftsman because the licen -- or the applicant itself  
12 is ultimately responsible for the filings not the counsel.

13 MR. EMMONS: Your Honor, there is much in the motion  
14 that is not in any of the declarations, the -- that is being  
15 quoted in the Bill of Particulars.

16 JUDGE GONZALEZ: No -- well, Mr. Weber's making the  
17 point that because it is their motion for summary decision  
18 they have, in effect, adopted the argument. Is that your  
19 argument?

20 MR. WEBER: Yes, Your Honor.

21 MR. EMMONS: Well --

22 JUDGE GONZALEZ: And why should not the argument be  
23 imputed to the people's -- to the principles submitting the  
24 declarations.

25 MR. EMMONS: I'm not --

1 JUDGE GONZALEZ: Do you follow me?

2 MR. EMMONS: I'm not sure where you are.

3 JUDGE GONZALEZ: In other words, I think Mr. Weber's  
4 position is, I believe this is his position, that the  
5 principles adopted the argument set forth by counsel in the  
6 motion --

7 MR. SCHNEIDER: They may --

8 JUDGE GONZALEZ: -- and apparen -- and for that  
9 reason, the statements that are set forth in the motion are  
10 relevant and that's why he included them, is that correct?

11 MR. WEBER: That's correct, Your Honor.

12 MR. EMMONS: But they adopted it, Your Honor, in  
13 the -- certainly in the belief that the arguments were made --  
14 that the statements, rather, the pleading was written in good  
15 faith by counsel and so it --

16 JUDGE GONZALEZ: Well, they would have, it would  
17 seem to -- they would have known, wouldn't they, I mean, one  
18 way or the other.

19 MR. SCHNEIDER: Well, if they adopted the reason  
20 that the filing, Your Honor, they just as well adopted the  
21 rationale behind the drafting of it, one could argue.

22 MR. WEBER: There's -- well, I mean, I certainly  
23 don't think we can assume that, that they adopted the  
24 counsel's rationale unless we can have some type -- I mean I  
25 see no statement in Paragraph 42 o 43 where Mr. Belendiuk

1 | states he conveyed his beliefs to the parties.

2 |           MR. SCHNEIDER: No, but --

3 |           MR. WEBER: I just don't see how -- where we have  
4 | Mr. Belendiuk beliefs until we get to the next step.

5 |           JUDGE GONZALEZ: I thought your argument was that  
6 | the arguments made by Mr. Belendiuk were in effect adopted by  
7 | the principles in submitting the notion.

8 |           MR. WEBER: Yes, Your Honor, that is correct?

9 |           JUDGE GONZALEZ: Wasn't that not your argument, and  
10 | that's why you feel the motion in it's -- the body of the  
11 | motion is relevant, correct, other than just the declarations.

12 |           MR. WEBER: That's correct, Your Honor, that is  
13 | correct.

14 |           MR. SCHNEIDER: There is, Your Honor, some testimony  
15 | that -- in the very paragraph that's being asked to be  
16 | stricken, that at times counsel would rate -- make  
17 | recommendations by telephone to members of the management  
18 | committee informally so that Mr. Weber states there is no  
19 | indication in these paragraphs, in point of fact, there is  
20 | some indication, although it would be general that these  
21 | things may have been discussed or may not have been with  
22 | respect to particular actions. It is -- I also think we're  
23 | talking very broadly about Paragraphs 42 and 43 and that  
24 | objections to parts of them shouldn't warrant objections to  
25 | all of them. I mean, you can focus on the sentence, for my

1 own -- from my own experience that was absolutely true,  
2 whether that is a relevant statement or not, Mr. Belendiuk  
3 believed it, the other witnesses may have believed it. I  
4 don't know that it's essential that it be here, on the other  
5 hand, the context of the entire paragraph.

6 JUDGE GONZALEZ: Well, certainly the first sentence,  
7 Mr. Weber, it's just a statement of fact, I mean, that's not  
8 objectionable, is it, I mean, that his firm drafted -- I mean,  
9 this is not contested?

10 MR. WEBER: No, nothing -- I mean --

11 JUDGE GONZALEZ: That be a better approach --

12 MR. WEBER: -- allow the first sentence, I would  
13 have no objection.

14 JUDGE GONZALEZ: -- if -- since the document itself  
15 is mentioned in the Bill of Particulars, I don't have any  
16 objection to having some of this information in but maybe we  
17 can excise those portions which you consider -- and I guess  
18 Mr. Hardman joins in the objection --

19 MR. HARDMAN: Yes, Your Honor.

20 JUDGE GONZALEZ: -- if there's any specific portion  
21 of those two paragraphs that you feel is objectionable and  
22 should not be included, why don't you point to those now and -  
23 -

24 MR. WEBER: Well, I'll looking beyond the first  
25 sentence and I'm having trouble seeing anything else that



1 | should be allowed to remain, I mean, I -- after --

2 |           JUDGE GONZALEZ: Well, again, the second sentence is  
3 | just a statement of fact, right, a number of times the LaStar  
4 | management committee, I guess it either does or it doesn't, I  
5 | assume it does, the second sentence.

6 |           MR. WEBER: Right, and then again, I mean, the third  
7 | sentence --

8 |           JUDGE GONZALEZ: What about the third sentence,  
9 | that -- I understand that the allegation has been made, that  
10 | seems a bit tenuous.

11 |           MR. HARDMAN: Your -- yeah, Your Honor, I've --  
12 | that's where I would suggest starting to excising process.

13 |           JUDGE GONZALEZ: Yeah, I would agree, I think that  
14 | seems a bit tenuous.

15 |           MR. EMMONS: May I be heard on one point?

16 |           JUDGE GONZALEZ: Sure, with respect to that third  
17 | sentence?

18 |           MR. EMMONS: No, a more general point, responding to  
19 | an observation you made, I had made the point that the  
20 | principles rely on the good faith of their counsel when a  
21 | pleading is submitted to the Commission and you made -- your  
22 | question and response to that was, well, wouldn't they know  
23 | and, Your Honor, I don't think it is fair to assume --

24 |           JUDGE GONZALEZ: Well, I don't, did I say that, I  
25 | don't recall.

1 MR. EMMONS: I thought you did.

2 JUDGE GONZALEZ: I mean, if I did, I didn't mean to.

3 MR. EMMONS: Oh, I'm sorry, but I thought you did,  
4 but let me make the position --

5 JUDGE GONZALEZ: I sometimes lose track of what I  
6 said, but I don't know whether I would have said that.

7 MR. EMMONS: The broader point I want to make  
8 though, Your Honor, is that principles always rely on counsel,  
9 they have to because principles, although they may know facts  
10 and obviously facts they were involved in and so forth, they  
11 know that, but what they don't know necessarily is what kind  
12 of things --

13 JUDGE GONZALEZ: A legal argument admittedly, yeah.

14 MR. EMMONS: -- what kind of things need to be  
15 disclosed though --

16 JUDGE GONZALEZ: No, I agree -- no, I was really --

17 MR. EMMONS: -- and there is testimony by the  
18 witnesses --

19 JUDGE GONZALEZ: I think perhaps maybe you missed --  
20 I was really probing more Mr. Weber's position asking those  
21 questions, I don't believe I would have made that statement.

22 MR. WEBER: Well, the Bureau was quite careful in  
23 writing the Bill of Particulars to avoid putting in legal  
24 argu -- statements and pleadings that were legal arguments,  
25 for the legal realizes that counsel really is more ultimately

1 responsible for legal arguments than are principles.

2 JUDGE GONZALEZ: Surely, yes.

3 MR. EMMONS: Yeah, but it's not just the --

4 MR. WEBER: However, the Bureau's Bill of  
5 Particulars when it discusses the motion for summary decision,  
6 I believe very clearly must cite to factual statements which  
7 were at question and Mr. Belendiuk's reason for putting in  
8 those factual statements again, I don't believe are relevant,  
9 it's -- whether it's relevant or --

10 MR. EMMONS: But to the extent that they are relied  
11 on by the principles, they are relevant, Your Honor, because  
12 one of the recurring themes in the Bill of Particulars is that  
13 U. S. Cellular omitted to say many things in many different  
14 places and at many different times, they said certain things  
15 but they didn't say other things and the omission was  
16 materially misleading. Your Honor, there is testimony from at  
17 least one of the witnesses that he relied on counsel to  
18 prepare the declarations and he didn't -- he was never advised  
19 that more should have been said or there should have been more  
20 detail and he would have been happy to put it in if counsel  
21 had advised him that it needed to be there.

22 JUDGE GONZALEZ: Well, I'm sure that'll be part of  
23 the record at some point, yeah.

24 MR. EMMONS: Yes, but that therefore makes my point,  
25 Your Honor, that the principles rely on the good faith of

1 | their counsel and -- as we have to in this business and  
2 | therefore the good faith of counsel is relevant to the  
3 | applicants and the principles conduct under the designated  
4 | issue so I come back to that and I urge that we not just  
5 | wholesale strike references by counsel to what they believe  
6 | and what their good faith intentions were.

7 |           MR. SCHNEIDER: To emphasize that, Your Honor, I  
8 | will be willing to surmise that you are going to be asked to  
9 | make findings about the intention behind certain statements  
10 | made in the pleadings and by taking out statements of the very  
11 | draftsmen of those pleadings, there'll be no evidence in the  
12 | record --

13 |           JUDGE GONZALEZ: Well, the best way to proceed is as  
14 | we were, we're now addressing that third sentence, I gather  
15 | there is an objection to that third sentence?

16 |           MR. WEBER: Yes, Your Honor.

17 |           JUDGE GONZALEZ: The one that begins with, I  
18 | understand, do you want to respond, see, what is the relevance  
19 | of that?

20 |           MR. EMMONS: Well, that's a -- that's a predicate or  
21 | foundation for what follows --

22 |           MR. HARDMAN: And my objection went to the rest of  
23 | the paragraph --

24 |           MR. EMMONS: I think our position is clear on this,  
25 | Your Honor, they are clearly diametrically opposed positions

1 by the parties, we think it's relevant, they say it's not.

2 JUDGE GONZALEZ: Yeah, I have serious problems with  
3 that paragraph from, I understand through the -- to the  
4 bottom, to the partner which is the last word in that  
5 paragraph. All right, 43, is there any portion of that  
6 paragraph which you do not feel is objectionable, Mr. Weber?

7 MR. WEBER: No, Your Honor, strike the entire  
8 paragraph.

9 JUDGE GONZALEZ: Well, of course -- well,  
10 eliminating the first -- that -- eliminating 42 almost renders  
11 that 43 pointless.

12 MR. SCHNEIDER: No, no, Your Honor, there's a very  
13 important point that needs to be made.

14 JUDGE GONZALEZ: All right.

15 MR. SCHNEIDER: There are statement of facts in the  
16 middle of paragraph that exist wholly in -- apart from 42,  
17 there is a statement that says, starting agreement --

18 JUDGE GONZALEZ: You want to point that sentence --

19 MR. SCHNEIDER: -- agreement with counsel's  
20 recommendations was communicated to counsel via telephone from  
21 members of the management committee, and it's a finish of  
22 quote and then it says, although LaStar operated informally  
23 and although the SJI and USCC executives who made LaStar's  
24 management decisions did so mostly outside of formal  
25 management committee setting, their decision is nonetheless

1 for the functional equivalent of actions by the management  
2 committee.

3 MR. HARDMAN: Your Honor, I believe I just heard  
4 Mr. Schneider say that was a statement of fact --

5 JUDGE GONZALEZ: Yeah, testify -- yeah.

6 MR. HARDMAN: -- which is exactly what we've been  
7 arguing about, that they are trying to retry the LaStar  
8 findings in the guise of this case.

9 MR. SCHNEIDER: No, that is a false statement.  
10 Although the -- this states --

11 JUDGE GONZALEZ: Well, we can read it,  
12 Mr. Schneider.

13 MR. SCHNEIDER: Um-hum, I mean, if we're going to  
14 strike parts of the paragraph we may have to recraft the  
15 sentence but there is a statement in there about how the  
16 manage -- the executives communicate.

17 MR. WEBER: That's not -- the way -- the statement  
18 about how the executives communicated is actually quoting from  
19 the motion for summary decision which will be admitted into  
20 evidence anyway. If you notice where he starts reading  
21 agreement with counsel's recommendations is all within quotes  
22 and that's from Page 11 and 12 of the motion for summary  
23 decision.

24 MR. SCHNEIDER: Right, but you couldn't really  
25 complain the sentence, the motion explicitly stated and then

1 | quoted because that's just a statement of fact, it's not a  
2 | statement of opinion. Now, the next statement continues and  
3 | it says -- if you took out the word although, it says, LaStar  
4 | operated informally and then it also says the SJI and USCC  
5 | executives who made LaStar's decisions did so mostly outside  
6 | of formal management committee setting. Those are statements  
7 | or phrases that set forth fact. Now, I disagree they are  
8 | relitigation of what went on earlier or findings that were  
9 | made earlier.

10 | JUDGE GONZALEZ: Well, what is the relevance of that  
11 | specific sentence?

12 | MR. SCHNEIDER: Well, there is going to be  
13 | testimony -- the hearing designation order and the Bill of  
14 | Particulars questions the state of -- the statements made by  
15 | Mr. Nelson about the functioning of the LaStar management  
16 | committee. In his view, it had a particular way or operating  
17 | or it had a way of operating that gives him a state of mind  
18 | that made his statements accurate or true and these statements  
19 | are statement of fact which tend to prove that or which  
20 | corroborate that.

21 | (End of Tape 1. Start of Tape 2.)

22 | MR. HARDMAN: Your Honor, I fail to understand how  
23 | Mr. Belendiuk's view of the, the way the -- the LaStar  
24 | Management Committee functioned, how that corroborates Mr.  
25 | Nelson's or any other USCC witness's belief.

1           MR. WEBER: The Bureau certainly agrees with that.  
2 It just doesn't get us anywhere.

3           MR. SCHNEIDER: It's a statement from a person who  
4 participated in these events as to how they happened. When  
5 you're going to evaluate --

6           MR. HARDMAN: It's a --

7           JUDGE GONZALEZ: Yeah, I have real -- yeah, I do --  
8 I have serious problems. I think the whole tail end of the  
9 paragraph is conclusory. It's beginning --

10          MR. SCHNEIDER: We're arguing about the middle part,  
11 not the --

12          JUDGE GONZALEZ: Yeah, I know, but I, I've gone on  
13 while he was changing the tape and -- I have real problems  
14 with the tail end of the paragraph. I think it's all  
15 conclusory. I don't have any problem with the statement that  
16 LaStar operated informally. And although SJI and USCC  
17 executives who made LaStar's management did so mostly outside  
18 a formal Management Committee setting, I don't really have any  
19 problem. But from -- with that. But with their discussions  
20 on to the end of the paragraph, I, I think that's all  
21 conclusory. And I don't really know what it says about the  
22 state of mind of any of the principals of USCC. Does anybody  
23 want to be heard on that?

24          MR. SCHNEIDER: I can explain to you.

25          JUDGE GONZALEZ: Sure. Go right ahead.



1 MR. SCHNEIDER: You're going to hear testimony  
2 during the hearing, or you'll read testimony, that indicates  
3 that, that at times the parties -- that all of this will be  
4 about the functioning of the Management Committee and whether  
5 statements made about its functioning were made less than  
6 candidly. The Parties, each one of them will testify not only  
7 about how they viewed the Management Committee and how they  
8 viewed its functioning, but that they spoke with the attorney  
9 about the, the Committee was functioning.

10 JUDGE GONZALEZ: Yeah, but that's not --

11 MR. SCHNEIDER: And that the Committee --

12 JUDGE GONZALEZ: -- what he says here.

13 MR. SCHNEIDER: And that the, that the attorney --

14 JUDGE GONZALEZ: He doesn't say that, that: "Mr.  
15 Nelson told me that..." You know, they considered that the  
16 way the Committee was operating to be the, the functional  
17 equivalent of -- here he's just saying, "I considered it to  
18 be..." I mean, I think that's --

19 MR. SCHNEIDER: But if, if he gave --

20 JUDGE GONZALEZ: I don't think it's of any probative  
21 value, really I don't, and I think it's conclusory. So we  
22 will strike that portion of the paragraph from "their  
23 decisions nonetheless" all the way down to the end of the  
24 paragraph contained in the motion. I don't have any problem  
25 with, with the rest of the paragraph, with the exception of

1 | changing "although."

2 |           MR. SCHNEIDER: What we would do --

3 |           JUDGE GONZALEZ: Well --

4 |           MR. SCHNEIDER: -- is take out the word "although"  
5 | twice and it would now read -- we would read from "it was" all  
6 | the way down to the end of the citation. Then we would  
7 | reformulate the paragraph as you suggested to read: "LaStar  
8 | operated informally and the SJI and USCC executives who made  
9 | LaStar's management decisions did so mostly outside a formal  
10 | Management Committee setting."

11 |           JUDGE GONZALEZ: Yeah, and I think the witness can  
12 | be cross-examined as to the basis for his, his opinion that  
13 | they operated outside a formal Management Committee setting.

14 |           MR. SCHNEIDER: We've added the sentence so that it  
15 | does change the meaning slightly. It now -- it was set up as  
16 | a preface for another statement. It now reads as the --

17 |           JUDGE GONZALEZ: Oh, in other words, you're not  
18 | pleased with the sentence the way it reads at the moment, Mr.  
19 | Schneider?

20 |           MR. SCHNEIDER: Well, Your --

21 |           JUDGE GONZALEZ: You can, you can modify it. I  
22 | mean, it's your exhibit.

23 |           MR. SCHNEIDER: No. I know, and --

24 |           JUDGE GONZALEZ: Yeah.

25 |           MR. SCHNEIDER: -- having -- we have to deal with

1 your, with your ruling about being conclusory.

2 JUDGE GONZALEZ: Surely.

3 MR. SCHNEIDER: Part of the --

4 JUDGE GONZALEZ: Understood.

5 MR. SCHNEIDER: -- the statement comes in --

6 JUDGE GONZALEZ: Understood. So --

7 MR. SCHNEIDER: -- part of it doesn't. Obviously,  
8 when you take part of a sentence out it changes.

9 JUDGE GONZALEZ: It's not the first time we've done  
10 it.

11 MR. SCHNEIDER: Right. Right.

12 JUDGE GONZALEZ: So, if you want to re-form the  
13 sentence, go right ahead and suggest a re-formation.

14 MR. EMMONS: Perhaps we ought to defer that, Your  
15 Honor -- I mean, leave, leave the ruling stand as it is and,  
16 and if we think it ought to be re-formed when we come back in  
17 with Mr. Belendiuk as a witness, just perhaps have him re-form  
18 it or offer to re-form it in a way we think appropriate.

19 JUDGE GONZALEZ: It would be better since he is, he  
20 is the --

21 MR. EMMONS: Yes.

22 JUDGE GONZALEZ: -- the attesting individual.

23 Surely. I have no objection to that approach. Are there any  
24 further objections?

25 MR. WEBER: One final one, Your Honor. I would

1 | strike the first sentence of paragraph 46, move to strike that  
2 | as irrelevant.

3 | JUDGE GONZALEZ: Mr. Emmons?

4 | MR. WEBER: It's conclusory and --

5 | MR. EMMONS: The same response we've had all along,  
6 | Your Honor.

7 | JUDGE GONZALEZ: Yeah. I, I find a good reason for  
8 | sustaining the objection and that portion is stricken too, the  
9 | first sentence of paragraph 46 beginning with "with" and  
10 | ending with "accurate and correct."

11 | All right. That concludes your objection?

12 | MR. WEBER: Yes, it does, Your Honor.

13 | JUDGE GONZALEZ: Mr. Hardman?

14 | MR. HARDMAN: Your Honor, I would object to  
15 | paragraph 30 through 32.

16 | JUDGE GONZALEZ: I'll have to read through them real  
17 | quickly.

18 | (Pause to review document.)

19 | JUDGE GONZALEZ: Your objection is paragraph 30  
20 | through 33?

21 | MR. HARDMAN: Through 32.

22 | JUDGE GONZALEZ: 32. Again, would you state the  
23 | nature of your objection? I'm sorry.

24 | MR. HARDMAN: All right. With respect to paragraph  
25 | 30 and 31, they're there to, to document the first sentence of

1 paragraph 30, which is just a transparent reargument of the  
2 facts found adversely to the parties in the LaStar proceeding.  
3 And the same is true with respect to paragraph 32. Again,  
4 it's reargument of the -- of this theory that SJI conveyed its  
5 wishes to -- on LaStar and exercised its control through Mr.  
6 Belendiuk as the conduit. And the Commission, you know,  
7 repeatedly has very forcefully rejected that theory and that  
8 argument and this -- these paragraphs, so far as I can tell,  
9 serve only to reargue those issues of fact.

10 MR. SCHNEIDER: Well, then, then, Your Honor, I  
11 would say that we may be ignoring the Hearing Designation  
12 Order, because there is a question raised in the Hearing  
13 Designation Order about the truthfulness or veracity of Mr.  
14 Nelson's statements that when he was asked about it or Mr.  
15 Belendiuk informed him that he had generally spoken or -- some  
16 occasions spoken with members of SJI. This very hearing was  
17 necessary to provide Mr. Belendiuk's testimony on these very  
18 factual matters. These are not opinions that, that are being  
19 quoted. This is not a recounting of -- or a retrial of the  
20 control issue. This is proof submitted on the -- on some of  
21 the very issues raised in the Hearing Designation Order,  
22 namely: was Mr. Nelson being accurate when he, when he stated  
23 certain matters about how the conference calls with Mr.  
24 Belendiuk went. Here Mr., here Mr. Belendiuk is to testify  
25 that, yes, this is how it occurred. I think that, that --

1 MR. HARDMAN: Your Honor --

2 MR. SCHNEIDER: -- it's -- it is directly relevant  
3 to that issue and counsel's attempt to exclude it on the basis  
4 that it could be used to argue the control point is a red  
5 herring.

6 MR. HARDMAN: But your argument, how could it be  
7 probative on the, the issue claimed when it just was a  
8 statement of fact that the Commission has rejected.

9 MR. SCHNEIDER: That is false. It has not rejected  
10 that fact.

11 MR. EMMONS: Your, Your Honor?

12 JUDGE GONZALEZ: Yes, sir?

13 MR. EMMONS: Paragraph, paragraph 32 of the Hearing  
14 Designation Order in this case speaks directly to this point,  
15 I think. The essence of the paragraphs to which Mr. Hardman  
16 is presently objecting are a description of communications  
17 between Mr. Belendiuk and SJI. And in paragraph 32 of this  
18 Hearing Designation Order the Commission says, referring to  
19 the LaStar record, "There does not appear to be any record  
20 evidence to support Mr. Nelson's understanding that Belendiuk  
21 had obtained prior approval from SJI Management Committee  
22 members. And throughout the Designation Order the Commission  
23 says: we don't have a full record. That's precisely one of  
24 the points that the Commission is all but inviting a full  
25 record to be submitted. This evidence is the submission of

1 that full record. This evidence is the evidence of telephone  
2 calls, hundreds of them, between Mr. -- I think hundreds, at  
3 least dozens -- I'll have to go back to the record -- but at  
4 least dozens over a period of time, hundreds of minutes of  
5 telephone calls between Mr. Belendiuk's office and SJI's  
6 offices, which demonstrates that there were communications,  
7 which in turn corroborates the plausibility of Mr. Nelson's  
8 claimed understanding that Mr. Belendiuk was communicating  
9 with SJI. So, this is critical evidence that goes directly to  
10 a gap in the record that is pointed to by the Hearing  
11 Designation Order as one of the main reasons why we need to  
12 have this hearing.

13 MR. HARDMAN: Your Honor, I would submit that that  
14 argument is a distortion of the Hearing Designation Order.  
15 What the Commission was saying in designating an issue as to  
16 Mr. Nelson's credibility is that the facts found in the LaStar  
17 proceeding contradicting his statements or were contrary to  
18 his statements. It was not an indication to go back and say  
19 that they should now introduce evidence on all these issues  
20 that there was no evidence introduced on or that they had  
21 their chance in the first hearing and, and did not adequately  
22 try. That's the problem that we have repeatedly in this case.

23 MR. SCHNEIDER: But, Your Honor, this is --  
24 counsel's asking you to reconsider your earlier ruling, just  
25 dressing it up a little differently. This evidence goes to

1 corroborate the truthfulness of Mr. Nelson's statements, his  
2 belief that when he was testifying about the occurrences and  
3 the occasions in the LaStar proceeding he was testifying  
4 truthfully about those. It is not -- it is, it is not in --  
5 being inserted to do any of the things Mr. Hardman attributes  
6 to it.

7 JUDGE GONZALEZ: Yeah, I agree. I, I don't have any  
8 problem with those paragraphs. Objection is overruled. Are  
9 there any further objections, Mr. Hardman?

10 MR. HARDMAN: No, Your Honor, to this, this exhibit.

11 JUDGE GONZALEZ: I gather no objection to any of the  
12 attachments to that exhibit, A, B, C, D, E attachments -- F  
13 through M, is it?

14 MR. EMMONS: A through M, as in Mary, yes, Your  
15 Honor.

16 JUDGE GONZALEZ: All right. Not hearing any --

17 MR. WEBER: Your Honor, actually, just a point of  
18 clarification, do we need any more exacting identification of  
19 these exhibits other than just A through M?

20 MR. EMMONS: Well, I would --

21 JUDGE GONZALEZ: Well, hopefully we all have the  
22 same copy, but --

23 MR. WEBER: I have no objection as to identifying  
24 them as such, but --

25 JUDGE GONZALEZ: -- you're probably right. To err



1 on the side of caution, we'd better at least briefly identify  
2 -- if you will, Mr. Emmons -- each one so we all have -- we're  
3 certain we all have the same --

4 MR. EMMONS: All right, Your Honor.

5 JUDGE GONZALEZ: -- attachments.

6 MR. EMMONS: Tab A is a compilation of documents  
7 relating to correspondence with Bell South and it totals nine  
8 pages, 1 through 9. Tab --

9 JUDGE GONZALEZ: And they're numbered, right?

10 MR. EMMONS: They're all numbered in the lower  
11 right-hand corner, Your Honor.

12 JUDGE GONZALEZ: Okay.

13 MR. EMMONS: Tab B is a two-page compilation of two  
14 documents, also correspondence to SJI and TDS regarding Bell  
15 South.

16 JUDGE GONZALEZ: All right.

17 MR. EMMONS: Tab C is a true copy of the Official  
18 FCC File Copy of a pleading file by LaStar on March 2, 1988,  
19 and it totals 29 pages.

20 JUDGE GONZALEZ: And they're numbered as well?

21 MR. EMMONS: Yes. All pages are numbered, Your  
22 Honor.

23 JUDGE GONZALEZ: All right.

24 MR. EMMONS: Tab D is a Pleading with covering  
25 letter filed at the Commission on June 18, 1990. The exhibit